

REMARKS

Claims 1-13 are pending in the present application. Reconsideration of the pending claims is requested in view of the following.

Allowable Subject Matter

In response to the Examiner's comments that claims 3 and 10 would be allowable "if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office Action and to include all of the limitations of the base claim and any intervening claims," Applicant notes that no rejection under 35 U.S.C. 112, 2nd paragraph, is set forth in the final Office Action. In order to put claims 3 and 10 in allowable condition, Applicant has amended claims 3 and 10 to include all of the limitations of the base claim and any intervening claims. Entry of the claim amendment is requested since the amendment puts claims 3 and 10 in allowable condition. Claims 3 and 10 are now in allowable condition.

Rejection of Claims 1, 4, 5, 11 and 12 under 35 U.S.C. § 103(a)

Claims 1, 4, 5, 11 and 12 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent Application No. 2003/0088694 A1 ("Patek") in view of U.S. Patent No. 6,920,504 ("Bender"). Applicant respectfully submits that the rejection should be withdrawn for at least the following reasons.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, the Examiner must show, *inter alia*, that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references, and that, when so modified or combined, the prior art teaches or suggests all of the claim limitations. M.P.E.P. §2143. In addition, as clearly indicated by the Supreme Court, it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to [modify] the [prior art] elements" in the manner claimed. See KSR Int'l Co. v. Teleflex, Inc., 82 U.S.P.Q.2d 1385 (2007). In this regard, the Supreme Court further noted that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." Id., at 1396. To the extent that the Examiner may be relying on the doctrine of inherent disclosure in support of the obviousness rejection, the Examiner must

provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Claim 1 recites, in relevant parts, “transmitting messages in transmission time slots at a preselected transmission rate, wherein each transmission time slot is uniquely allocated to a corresponding single message; and **dynamically changing, during transmission of messages, the transmission rate** for at least one transmission time slot in such a way that a corresponding single message provided for the at least one transmission time slot is transmitted repeatedly within the at least one transmission time slot.” Amended claim 11 recites substantially similar features as the above-recited features of claim 1.

On p. 3 of the final Office Action, the Examiner concedes that Patek does not suggest the claimed feature of “**dynamically changing, during transmission of messages, the transmission rate for at least one transmission time slot.**” However, the Examiner contends in support of the rejection that col. 4, l. 2-5 of Bender discloses that “the amount of data communicated in a period of time varies in accordance with the communication data rate,” and therefore the Examiner contends that “it would have been obvious to . . . change the rate for a period of time as taught by Bender.” Applicant submits that the quoted statement from Bender provides nothing more than an obvious conclusion based on the definition of “data rate”: since “data rate” obviously means the amount of data transmitted per a unit of time, it is inherent that the amount of data communicated per a unit of time would vary in accordance with the communication data rate. In fact, this obvious conclusion is explicitly stated in the sentence immediately following the quoted sentence of Bender: “A receiver may receive more data at a high data rate than low data rate during the same period of time.” (Bender, col. 4, l. 5-7). Accordingly, the quoted section of Bender merely indicates that a different data rate produces a different amount of data transmitted per a unit of time, but this disclosure provides absolutely no suggestion regarding “**dynamically changing, during transmission of messages, the transmission rate for at least one transmission time slot.**”

For at least the foregoing reasons, independent claims 1 and 11, as well as their dependent claims 4, 5 and 12, are allowable over Patek in view of Bender. Withdrawal of this obviousness rejection is requested.

Rejections of Claims 2, 6-9 and 13 under 35 U.S.C. § 103(a)

Claims 2, 8, 9 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Patek and Bender, in further view of U.S. Patent No. 4,709,376 ("Kage"). Claims 6 and 7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Patek and Bender, in further view of U.S. Patent Application No. 2002/0126691 ("Strong"). Applicant respectfully submits that the rejections should be withdrawn for at least the following reasons.

Claims 2, 6-9 and 13 ultimately depend from claim 1 or claim 11. As noted above in connection with claims 1 and 11, the overall teachings of Patek and Bender do not render claims 1 and 11 obvious. In addition, Kage and Strong fail to remedy the deficiencies of Patek and Bender as applied against parent claims 1 and 11. Accordingly, dependent claims 2, 6-9 and 13 are allowable over the applied references. For at least the foregoing reasons, rejections of claims 2, 6-9 and 13 should be withdrawn.

CONCLUSION

It is respectfully submitted that all pending claims of the present application are in allowable condition. Prompt reconsideration and allowance of the application are respectfully requested.

Respectfully submitted,

/Jong H. Lee/

Date: September 7, 2010

By Jong H. Lee, Reg. No. 36,197 for:
Gerard A. Messina, Reg. No. 35,952

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646